

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTIAN LOUBOUTIN S.A.; CHRISTIAN
LOUBOUTIN, L.L.C.; and CHRISTIAN
LOUBOUTIN,

Plaintiffs,

v.

YVES SAINT LAURENT AMERICA, INC.;
YVES SAINT LAURENT AMERICA
HOLDING, INC.; YVES SAINT LAURENT
S.A.S.; YVES SAINT LAURENT (an
unincorporated association); JOHN AND JANE
DOES A-Z (UNIDENTIFIED); and XYZ
COMPANIES 1-10 (UNIDENTIFIED),

Defendants.

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CIVIL ACTION NO.: _____

JUDGE MARRERO

11 CIV 2381

DECLARATION OF ROMAN KHAYKIN IN SUPPORT OF PLAINTIFFS'
APPLICATION FOR A PRELIMINARY INJUNCTION

ROMAN KHAYKIN hereby declares, pursuant to 28 U. S. C. § 1746, as follows:

1. I am the President of InfoTactic Group, Inc. ("ITG"), an investigative agency licensed by the State of New York with offices in Brooklyn, New York. ITG has participated in and/or conducted a considerable and growing number of trademark investigations involving counterfeit and infringing watches, apparel, footwear, jewelry, and other goods, as well as diverted (or "gray market") goods.

2. I submit this declaration in support of Plaintiffs' Application for a Preliminary Injunction against Defendants Yves Saint Laurent America, Inc., Yves Saint Laurent America

Holding, Inc., Yves Saint Laurent S.A.S., Yves Saint Laurent, Jane and John Does A-Z and XYZ Companies 1-10 (collectively, "Defendants").

3. In the course of conducting investigations for Plaintiffs Christian Louboutin S.A., Christian Louboutin, L.L.C. and Christian Louboutin (collectively, "Plaintiffs"), I have become familiar with individuals and businesses offering to sell and selling unauthorized copies of Plaintiffs' luxury women's shoes, which bear copies of Plaintiffs' well-known trademarks and trade names, including Plaintiffs' federally registered, famous, red sole trademark (the "Red Sole Mark"). This Court is respectfully referred to the Complaint and Memorandum of Law filed herewith for details and pictures of the Red Sole Mark.

4. The following actions were undertaken by me. If called upon as a witness, I could testify to the following from personal knowledge and/or a review of ITG's files, which are maintained under my direction and control.

5. In January, 2011, Plaintiffs, by their counsel, Harley I. Lewin, Esq. of McCarter & English, LLP, requested that ITG conduct an investigation into Defendants' sale of women's shoes with red soles. As a part of this investigation, I conducted Internet research, and visited and called department stores.

6. On January 23, 2011, I visited the website for the department store Neiman Marcus at <www.neimanmarcus.com> and saw that a *YVES SAINT LAURENT* ("YSL") Palais peep-toe pump and a *YSL* Tribute sandal, both with red soles, were available for sale. A photograph of these web pages as they currently appear are attached hereto as **Exhibit A**.

7. On January 23, 2011, I visited the website for the department store Saks Fifth Avenue at <www.saksfifthavenue.com> and observed that a *YSL* Tribute sandal with a red sole

was available for sale. A photograph of this website as it currently appears is attached hereto as **Exhibit B**.

8. On January 23, 2011, I visited the website for the department store Bergdorf Goodman at <www.bergdorfgoodman.com>. I saw that a *YSL* Tribute Stingray sandal with a red sole was available for sale. A photograph of this website as it currently appears is attached hereto as **Exhibit C**.

9. On January 24, 2011, I visited Defendants' *YSL* boutique store located at 3 East 57th Street, New York, NY. The salesperson showed me *YSL* shoes with red soles branded as Tribute, Tribtoo and Woodstock. The salesperson stated that *CHRISTIAN LOUBOUTIN* brand shoes ("*CL* Shoes") shoes are famous for the red sole and that the red sole is Plaintiffs' trademark. He agreed that the red sole on the Tribtoo shoe looked like the signature red sole on *CL* Shoes, and it had a similar heel to a *CL* Shoe. The salesperson claimed that the Tribute and Tribtoo shoes with red soles are popular with consumers. Photographs of the *YSL* shoes with red soles that I took while at this boutique are attached hereto as **Exhibit D**.

10. On January 24, 2011, I visited the department store Bergdorf Goodman located at 754 5th Avenue, New York, New York. Upon entering the shoe department, I observed *YSL* shoes with red soles branded as Tribute. Photographs of the shoes that I took while at Bergdorf Goodman are attached hereto as **Exhibit E**. When I asked a salesperson whether the store had women's shoes with red soles, she pointed to *CL* Shoes and stated that the store did not have any other shoes with red soles except for *CL* Shoes. When I pointed to the *YSL* shoes that I had seen, the salesperson was surprised to see that *YSL* had shoes with red soles. She stated that consumers would probably be interested in *YSL* shoes with red soles as a result of the fame of *CL* Shoes. The salesperson claimed that the *YSL* Tribute shoes with red soles were selling great.

11. On January 24, 2011, I visited the department store Barneys New York located at 660 Madison Avenue, New York, New York. When I entered the store, I saw *YSL* shoes with red soles branded as Tribtoo. Photographs of that I took of this shoe are attached hereto as **Exhibit F**. When I asked whether the store had *YSL* shoes with red soles, the first salesperson who I spoke with stated that *YSL* shoes never have red bottoms and that only *CL* Shoes have red bottoms. When I pointed to the *YSL* Tribtoo shoes that I had observed, the salesperson acknowledged that these shoes had red soles. He stated that the store received the Tribtoo shoes with the red soles 3-4 weeks prior to my visit and that the shoes were selling great. This salesperson also observed that if customers are not familiar with *YSL* shoe styles, that they may confuse these *YSL* shoes as *CL* Shoes as a result of the red soles. The second salesperson who I spoke with stated that the red sole is Christian Louboutin's trademark and that no other company is allowed to copy this trademark. The first salesperson agreed.

12. On January 24, 2011, I visited the department store Neiman Marcus located at Maple & Paulding Avenue in White Plains, New York. Upon entering the store, I observed *YSL* shoes with red soles branded as Palais 80. Photograph that I took of this shoe are attached as **Exhibit G**. When I asked the salesperson whether the store had *YSL* shoes with red soles, she directed me to *CL* Shoes. The salesperson stated that the red sole is a trademark of *CL* Shoes and that *YSL* does make shoes with red soles. When I showed her the Palais 80 shoe with a red sole, she was surprised and said it was not typical for Defendants to sell shoes with red soles and that customers may believe that this *YSL* shoe is a *CL* Shoe as a result of the red sole. She stated that the store recently received these Palais 80 shoes.

13. On January 24, 2011, I visited the department store Saks Fifth Avenue at 611 5th Avenue, New York, New York. Upon arriving in the shoe department, I observed a *YSL* Tribute

shoe with a red sole. A photograph of this shoe that I took is attached hereto as **Exhibit H**. When I asked the salesperson whether this store had any *YSL* shoes with red soles, he directed me to *CL* Shoes and stated that no other vendor is allowed to have red-colored soles because Christian Louboutin has a "patent" on the red sole and *CL* Shoes are famous. He stated that *CL* Shoes are worn by many celebrities, including Jennifer Lopez, Sandra Bullock and Oprah Winfrey, and that *CL* Shoes are the best selling shoes in the department. When I pointed at the *YSL* Tribute shoe with a red sole, the salesperson was surprised to see the red bottom on the shoe. The salesperson stated that the store had just one style of *YSL* shoes with red soles and that the store had recently received the red-soled Tribute shoes for Spring, 2011. He further claimed that the Tribute shoes are one of the best selling *YSL* styles in the department.

14. On January 27, 2011, I called the *YSL* boutique store located at 9700 Collins Avenue, # 153, Bal Harbour, Florida, 305-868-4424. When I asked the person who answered the telephone whether he had any shoes with red soles, he initially denied having such shoes and stated that Christian Louboutin is the only vendor who offers shoes with red soles. After I mentioned specific *YSL* shoe styles with red soles, the salesperson confirmed that the store did have Tribute, Woodstock and Tribtoo shoes with red soles.

15. On January 27, 2011, I called the Neiman Marcus department store located at 4170 Conroy Road, Orlando, Florida 407-264-5900. The woman who answered the telephone confirmed that the store had the *YSL* Tribute shoes with a red sole. She also let me know that all *CL* Shoes have red soles and that Christian Louboutin is known for red-soled shoes, not *YSL*. She further stated that the red sole is a signature of *CL* Shoes.

16. On January 27, 2011, I called the Neiman Marcus department located at 4400 Sharon Road, Charlotte, North Carolina, 704-442-7900. The woman who I spoke with

confirmed that the store did not have any *YSL* shoes with red soles, and stated that only *CL* Shoes should have a red sole unless the shoes are copies.

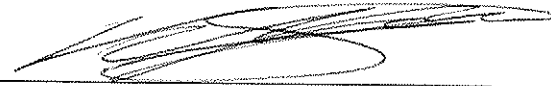
17. On February 8, 2011, I ordered, from an address in New York, one pair of *YSL* Tribute sandals with red soles via the Neiman Marcus website at <www.neimanmarcus.com>.

18. On February 9, 2011, I ordered, from an address in New York, one pair of *YSL* Stingray Tribute sandals with red soles via the Bergdorf Goodman website at <www.bergdorfgoodman.com>.

19. On February 15, 2011, I received the *YSL* Tribute sandals that I had ordered from the Neiman Marcus website at <www.neimanmarcus.com>. On the same day, I received the pair of *YSL* Stingray Tribute sandals that I had ordered from the Bergdorf Goodman website at <www.bergdorfgoodman.com>. Photographs of the *YSL* shoes that I received from these websites and the associated shipping labels are attached hereto as **Exhibit I**.

I declare under penalties of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 4 day of April, 2011 in Brooklyn, New York.


Roman Khaykin

State of N.Y. } ss.
County of Kings }

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BELLE MAURIBER
Notary Public, State of New York
26-4762627
Qualified in Kings County
Commission Expires 12/31/14